

1 Lisa D. Dubowski, Esq.; SBN: 237003
lisa.dubowski@michaellegalgroup.com
2 Christina Rymasz, Esq.; SBN: 233631
christina.rymsza@michaellegalgroup.com
3 Stephanie Ho, Esq.; SBN: 306109
stephanie.ho@michaellegalgroup.com
4 **MICHAEL & ASSOCIATES, PC**
5 555 St. Charles Drive, Suite 204
Thousand Oaks, California 91360
6 Telephone: (805) 379-8505
Facsimile: (805) 379-8525

7 *Attorneys for Plaintiff*
8 *Lina M. Michael McGurk*

9 **UNITED STATES DISTRICT COURT**
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 LINA M. MICHAEL MCGURK, an
12 individual;

13 Plaintiff,

14 vs.

15 SANTANDER CONSUMER USA,
16 INC. dba CHRYSLER CAPITAL; and
17 Does 1 to 10 inclusive,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

) Case No.:

) **COMPLAINT FOR:**

-) 1. NEGLIGENT VIOLATIONS OF THE
) FAIR CREDIT REPORTING ACT; [15
) U.S.C. §§1681, *et seq.*]
) 2. WILLFUL VIOLATIONS OF THE
) FAIR CREDIT REPORTING ACT; [15
) U.S.C. §§1681, *et seq.*]
) 3. DEFAMATION;
) 4. NEGLIGENCE;
) 5. ROSENTHAL FAIR DEBT
) COLLECTION PRACTICES ACT;
) [California Civ. Code §§1788, *et seq.*]
) 6. VIOLATIONS OF THE CALIFORNIA
) BUSINESS AND PROFESSIONS
) CODE [California Civ. Code §§17200,
) *et seq.*]
) 7. VIOLATIONS OF THE TRUTH IN
) LENDING ACT; [15 U.S.C. §1601, *et*
) *seq.*]

) **-AND-**
) **DEMAND FOR JURY TRIAL**
)

1 Plaintiff, LINA M. MICHAEL MCGURK, an individual (“PLAINTIFF”), brings this
 2 complaint against Defendant, SANTANDER CONSUMER USA, INC. dba CHRYSLER
 3 CAPITAL (“CHRYSLER CAPITAL”); and Does 1 to 10; and hereby alleges as follows:

4 **NATURE OF THE CASE**

5 1. Plaintiff brings this action seeking damages and injunctive relief against
 6 Defendant for violations of the *Fair Credit Reporting Act* (“FCRA”), Defamation,
 7 Negligence, the *California Rosenthal Fair Debt Collection Practices Act*
 8 (“RFDCPA”), *California Business and Professions Code*, and *Truth in Lending*
 9 *Act* (“TILA”), arising out of Chrysler Capital’s continuous reporting of false
 10 information to Transunion and other credit reporting agencies.

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction to hear this case pursuant to 28 U.S.C. §1331
 13 because this action arises out of Defendant’s violations of (i) the Fair Credit
 14 Reporting Act, 15 U.S.C. §1681 et seq., and the (ii) Truth In Lending Act,
 15 15 U.S.C. §1640 et seq., both of which are federal statutes.

16 3. This Court has personal jurisdiction over the Defendant since the actions
 17 complained of occurred in this district and the Defendant conducts business in
 18 California.

19 4. Venue is proper pursuant to 28 U.S.C. §1391(b) because (i) Plaintiff
 20 resides in the County of Ventura, State of California, which is within this judicial
 21 district; (ii) the conduct complained of herein occurred within this judicial district;
 22 and (iii) Defendant conducts business within this judicial district.

23 **PARTIES**

24 5. Plaintiff is, and at all times mentioned herein, was an individual citizen
 25 and resident of the State of California, County of Ventura.

26 6. Plaintiff is a natural person residing in Thousand Oaks, California and is a
 27 “consumer” as that term is defined by the *FCRA*, 15 U.S.C. §1681a(c).
 28

1 7. Plaintiff is an “obligor” as that term is defined in the TILA, 15 U.S.C.
2 §1666.

3 8. Plaintiff is a “debtor” and a “person” as defined by Cal. Civ. Code
4 §1788.2(h) and 1788.2(g) of the RFDCPA.

5 9. Plaintiff is informed and believes, and thereon alleges, that Defendant
6 Santander Consumer USA, Inc. dba Chrysler Capital is a company whose State of
7 Incorporation is Illinois and whose principal place of business is in Dallas, Texas.

8 10. Defendant Chrysler Capital is a corporate entity who, in the regular
9 course of business, furnishes information to one or more consumer credit
10 reporting agencies about its transactions or experiences with consumers and
11 therefore constitutes a “furnisher of information” as that term is defined by the
12 FCRA, 15 U.S.C. §1681s-2.

13 11. Chrysler Capital is a “creditor” as that term is defined by the TILA, 15
14 U.S.C. §1602g.

15 12. Chrysler Capital is a corporate entity who, in the regular course of
16 business, engages in the business of collecting its own debts and reporting such
17 debts to the credit bureaus and therefore is a “debt collector” as that term is
18 defined by Cal. Civ. Code §1788.2 (c) of the RFDCPA.

19 13. The true names and capacities, whether individual, corporate,
20 association, or otherwise of Defendants named herein as Does 1 through 10 are
21 unknown to Plaintiff but can be ascertained through discovery. Plaintiff will
22 amend the complaint to include the true names of the appropriate Doe defendants
23 after their identities have been ascertained.

24 **GENERAL ALLEGATIONS**

25 14. On or about August 2013, Plaintiff entered into a thirty-nine month
26 finance agreement with Chrysler Capital, for the lease of a 2014 Jeep Grand
27 Cherokee with the VIN number: 1C4RJECG7EC221773.
28

1 15. On or about June 2016, at the end of thirty-six months, Plaintiff
2 submitted her monthly payment and returned her vehicle to Shaver Auto,
3 Thousand Oaks, the leasing dealership, four months short of the lease termination
4 date.

5 16. On or about July 2016, Plaintiff submitted her final payment to Chrysler
6 Capital pursuant to the terms of the lease agreement and the End of Term Final
7 Bill, and her Chrysler Capital account ending in 51000 was closed with a zero due
8 balance. *See* “**Exhibit A**”.

9 17. Plaintiff is a member of a credit monitoring service offered through
10 Experian. This service provides alerts to consumers whenever there is new activity
11 that has been noted on any of the consumer’s credit reports.

12 18. On August 17, 2016, an alert was placed on Plaintiff’s account notifying
13 her that Chrysler Capital had flagged her account as being 30 days past due. The
14 notification indicated that this information had been reported to Transunion, a
15 credit reporting agency, and that her FICO credit score had been negatively
16 affected by this information. *See* “**Exhibit B**”.

17 19. When Plaintiff saw this alert, she became extremely distressed because
18 she had worked very hard over the past ten years to earn a high credit rating after
19 the bankruptcy she had filed on or about December 2006.

20 20. Plaintiff immediately contacted Chrysler Capital and spoke with a
21 representative who identified herself as “Shea.” Plaintiff told Shea that she was
22 disputing the fact that there was ever any past due balance on the account, and that
23 there could not be a past due balance since the balance owing was zero.

24 21. Chrysler Capital representative Shea informed Plaintiff that she did not
25 understand why Plaintiff’s account was being reported as past due, as Chrysler
26 Capital’s own records indicated that the account had a zero balance.

27 22. Plaintiff then contacted Transunion, and was informed that Chrysler
28 Capital, had in fact, reported Plaintiff’s account as being 30 days past due.

1 Plaintiff informed the representative that she was disputing the past due reporting
2 by Chrysler Capital. Plaintiff further informed Transunion that the information
3 being reported by Chrysler Capital was inaccurate and that the account had a zero
4 balance.

5 23. The Transunion representative informed Plaintiff that although Chrysler
6 Capital reported the balance as being past due, the account balance showed a zero
7 balance owing.

8 24. Despite Plaintiff's requests to both Chrysler Capital and Transunion to
9 remove the disputed item from her credit report, Chrysler Capital failed to properly
10 investigate Plaintiff's dispute and failed to remove the false information from
11 Plaintiff's credit report.

12 25. On or about November 2016, Plaintiff received another notification that
13 Chrysler Capital had once again flagged her account as being past due. This time
14 Chrysler Capital reported that Plaintiff's account was 90 days past due. The
15 notification indicated that this information had been reported to Transunion and
16 that her FICO credit score had once again been negatively affected by this
17 information. *See* **"Exhibit C"**.

18 26. Chrysler Capital acted in a false, deceptive, misleading, and unfair
19 manner when it communicated to the credit reporting agency inaccurate
20 information which it knew or had reason to know would defame Plaintiff.

21 27. Chrysler Capital acted in a false, deceptive, misleading, and unfair
22 manner by falsely representing the amount, character, or legal status of the debt.

23 28. Chrysler Capital acted in a false, deceptive, misleading, and unfair
24 manner by communicating or threatening to communicate to any person credit
25 information which it knew or should have known to have been false, including the
26 failure to communicate that a debt was being disputed.

29. At all times relevant hereto, Chrysler Capital was acting by and through its agents, servants and employees, who were acting within the scope and course of their employment and under the direct supervision and control of Defendant.

30. At all times relevant hereto, the conduct of Chrysler Capital and its agents, servants, and employees was malicious, intentional, willful, reckless, negligent, and in wanton disregard for the federal and state law rights of Plaintiff.

31. As a result of Defendant's actions, Plaintiff suffered emotional and mental distress, anxiety, embarrassment, loss of credit opportunities and commercial viability, pecuniary loss, harm to her reputation, a substantial decrease in her FICO credit score, credit rating, and perceived credit worthiness.

COUNT I

NEGLIGENT VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

15 U.S.C. §§1681, et seq.

(As to all Defendants)

32. Plaintiff incorporates by reference paragraphs 1 through 31 of this Complaint as though fully stated herein.

33. Defendant owed a duty of care to Plaintiff to investigate Plaintiff's dispute regarding her Chrysler Capital account ending in 51000 and to report accurate information on Plaintiff's credit report.

34. In September 2016, Plaintiff contacted Defendant extremely distressed when she discovered that Defendant had flagged her account as being thirty days past due, even though the account had a zero balance. A representative by the name of Shea, acknowledged the error and told Plaintiff that Defendant would correct the inaccurate information that was being transmitted to the credit bureaus.

35. Defendant breached its duty of care to Plaintiff when it failed to investigate the dispute in accordance with its duties under the FCRA, failed to correct the inaccurate information on her credit report and continued to publish false and inaccurate information.

36. Defendant's actions caused Plaintiff to suffer damages including emotional and mental distress, anxiety, embarrassment, loss of credit opportunities and commercial viability, pecuniary loss, harm to her reputation, a substantial decrease in her FICO credit score, credit rating, perceived credit worthiness, and other compensatory and consequential damages.

37. Defendant's actions were willful and wanton, as evidenced by Defendant's additional false reporting of Plaintiff's Chrysler Capital account in November of 2016, entitling Plaintiff to seek punitive damages as a result. *See* "Exhibit C".

COUNT II

KNOWING AND WILLFUL VIOLATIONS OF THE FAIR CREDIT

REPORTING ACT

15 U.S.C. §1681, et seq.

(As to all Defendants)

38. Plaintiff repeats and re-alleges and incorporates by reference paragraphs 1 through 37 above of the Complaint as if stated fully herein.

39. Defendant failed to investigate Plaintiff's dispute of the balance owed in accordance with its duties as a furnisher of information under the FCRA. Defendant's initial and continuous false reporting of Plaintiff's balance, despite knowledge of the falsity of that information constituted willful violations of the Fair Credit Reporting Act in accordance with 15 U.S.C. §1681, et seq.

40. Defendant's acts as described above were done with intentional, willful, reckless, wanton and negligent disregard for Plaintiff's rights under the law.

41. As a result of Defendant's knowing and willful violations of 15 U.S.C. §1681 et seq., Plaintiff is entitled to statutory damages, punitive damages, actual damages and attorneys' fees and costs.

42. Plaintiff is also entitled to and seeks injunctive relief prohibiting such harassing conduct in the future.

1 **COUNT III**

2 **DEFAMATION OF CHARACTER**

3 (As to all Defendants)

4 43. Plaintiff repeats and re-alleges and incorporates by reference paragraphs
5 1 through 42 above of the Complaint as if stated fully herein.

6 44. Chrysler Capital, with knowledge of the falsity of the statements, has
7 published and continues to publish statements to others, including consumer credit
8 reporting agencies such as Experian and Transunion and other unknown
9 individuals and entities who have accessed Plaintiff's credit report, that Plaintiff
10 has a past due account with Chrysler Capital. Chrysler Capital's statements were
11 false and were made with the conscious disregard for Plaintiff's rights.

12 45. Chrysler Capital's publication of false statements regarding Plaintiff's
13 creditworthiness and Plaintiff's alleged past due Chrysler account amounts to
14 defamation and defamation per se of the Plaintiff, entitling Plaintiff to
15 compensatory, special, consequential, and punitive damages.

16 **COUNT IV**

17 **NEGLIGENCE**

18 (As to all Defendants)

19 46. Plaintiff repeats and re-alleges and incorporates by reference paragraphs
20 1 through 45 above of the Complaint as if stated fully herein.

21 47. Chrysler Capital owed a duty to Plaintiff to investigate Plaintiff's dispute
22 and to report accurately regarding Plaintiff's credit history.

23 48. Chrysler Capital's false reporting to Transunion regarding the alleged
24 balance on the Chrysler account was negligent. In falsely reporting the balance as
25 "30 days past due" and "90 days past due" to Transunion and other consumer
26 credit reporting agencies, Chrysler Capital breached its duty to Plaintiff to
27 investigate Plaintiff's dispute and to report accurately regarding Plaintiff's credit
28 history. *See* Exhibits "**B**" and "**C**".

1 49. Chrysler Capital's actions were done with a conscious disregard of
2 Plaintiff's rights.

3 50. Chrysler Capital's failure to investigate Plaintiff's dispute and its false
4 reporting to Transunion and Experian regarding the account has caused and
5 continues to cause damage to Plaintiff, including emotional and mental distress,
6 anxiety, embarrassment, loss of credit opportunities and commercial viability,
7 pecuniary loss, harm to her reputation, a substantial decrease in her FICO credit
8 score, credit rating, perceived credit worthiness, and other compensatory and
9 consequential damages.

10 51. Chrysler Capital's failure to investigate Plaintiff's dispute and false
11 reporting of the account was willful and wanton, as evidenced by their additional
12 false reporting of Plaintiff's Chrysler Capital account in November 2016, entitling
13 Plaintiff to seek punitive damages.

14 **COUNT V**

15 **VIOLATIONS OF THE CALIFORNIA ROSENTHAL FAIR DEBT**

16 **COLLECTION PRACTICES ACT**

17 **CAL. CIV. CODE §§1788, et seq.**

18 (As to all Defendants)

19 52. Plaintiff repeats and re-alleges and incorporates by reference
20 paragraphs 1 through 51 above of the Complaint as if stated fully herein.

21 53. The above referenced Chrysler account is a "consumer debt" as that
22 term is defined by Cal. Civ. Code §§1788.2(h) and 1788.2(g) of the RFDCPA.

23 54. The above referenced credit report is a "consumer credit report" as
24 defined by Cal. Civ. Code §1788.2(j) of the RFDCPA.

25 55. Chrysler Capital violated Cal. Civ. Code §1788.20(B) of the RFDCPA
26 by communicating to the credit reporting agency inaccurate information which it
27 knew or should have known was false and would bear upon Plaintiff's credit-
28 worthiness.

c. Violations of 15 U.S.C. §1666a (Truth In Lending Act);

62. Defendant is engaging, has engaged, and there is a substantial likelihood that Defendant will continue to engage in these unlawful and unfair practices unless enjoined by this Court. As such, pursuant to Business and Professions Code §17203, Defendant should be enjoined from these unlawful and unfair business acts.

COUNT VII

VIOLATIONS OF THE TRUTH IN LENDING ACT

15 U.S.C. §§ 1601, et seq.

(As to all Defendants)

63. Plaintiff incorporates by reference paragraphs 1 through 62 of this Complaint as though fully stated herein.

64. Chrysler Capital's initial and continuing false reporting to Experian of Plaintiff's alleged Chrysler account balance is a violation of Chrysler Capital's duties as a creditor pursuant to the TILA, 15 U.S.C. §1666a.

65. Chrysler Capital's violations of the TILA entitle Plaintiff to seek statutory damages, actual damages, and attorneys' fees, pursuant to 15 U.S.C. §1640.

PRAYER FOR RELIEF

NOW, THEREFORE, Plaintiff prays that the Court enters judgment in her favor and against Defendant and issues orders, as follows:

1. An award of actual and statutory damages for violations of the Rosenthal Act in the amount of \$1,000 pursuant to Cal. Civ. Code §§ 1788.17, 1788.30;

2. An order for preliminary and permanent injunctive relief prohibiting Defendant from continuing to violate the FCRA, the California Rosenthal Fair Debt Collection Practices Act, and California Business and

Professions Code;

3. An award of statutory, compensatory, and consequential damages against each named Defendant;
4. An award of punitive damages against each named Defendant;
5. An award of costs of litigation;
6. An award of reasonable attorney fees; and
7. Any other relief the Court deems just and proper.

TRIAL BY JURY

Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands a jury trial.

DATE: February 10, 2017

MICHAEL & ASSOCIATES, PC

By: /s/ Lisa Dubowski
LISA D. DUBOWSKI,
Attorneys for Plaintiff